

REMEDATION AND REDEVELOPMENT (RR) NEWS FROM WISCONSIN DNR

October 26, 2005

EPA Accepts new ASTM Phase 1 Standard, Publishes AAI Rule November 1

Superfund law was modified in the Small Business Liability Relief and Brownfields Revitalization Act of 2002 to create new federal liability protections for some property owners. These protections are summarized in EPA's "Common Elements" guidance at

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

The new liability provisions can be gained by conducting "All Appropriate Inquiry" prior to purchasing a property in order to determine whether the property is contaminated. EPA has now announced that its long-awaited rule, "Standards for Conducting All Appropriate Inquiries", is expected to be published in the Federal Register on **November 1**. This rule accepts the new ASTM Standard for conducting Phase 1 Environmental Site Assessments (E 1527-05) as an acceptable standard for All Appropriate Inquiry.

ASTM and DNR have jointly planned training on use of this new standard. It will be included in our sessions on Phase I and II Environmental Site Assessments (ESAs) that are scheduled as follows.

- **November 29 – December 1, 2005** Eau Claire
- **January 30 – February 1, 2006** Appleton
- **February 6-8, 2006** Milwaukee

Each three-day session costs \$895 per person. For more information, including a course description and agenda, please see

http://dnr.wi.gov/org/aw/rr/general/calendar_detail.htm#11_29.

This chart summarizes the Superfund liability protections.

Date of Property Purchase	Requirements	Property Status	Landowner Status
Before May 1997	Not applicable	Contamination exists and action may be taken under Superfund.	Superfund liability may apply.
After May 1997 but before January 11, 2002	Purchaser used standard practices to comply with EPA's "all appropriate inquiry" requirement.	"All appropriate inquiry" has <u>not</u> identified contamination and the purchaser is not affiliated with a liable party	Innocent landowner status or contiguous property owner status. Superfund liability may not apply.
After January 11, 2002 brownfield amendments to the Superfund law	Purchaser used standard practices to comply with EPA's "all appropriate inquiry" requirement	"All appropriate inquiry" may have identified contamination that occurred prior to purchase, but the purchaser is not affiliated with a liable party.	Bona fide prospective purchaser status. Superfund liability may not apply.
After November 1, 2005	Purchaser has complied with "all appropriate inquiry" <u>using the new ASTM standard</u> .	"All appropriate inquiry" <u>using the ASTM standard</u> may have identified contamination that occurred prior to purchase, but the purchaser is not affiliated with a liable party.	Bona fide prospective purchaser status. Superfund liability may not apply.

Nov. 10 FET Session Features RR Program Updates

The Southeast Wisconsin Chapter of the Federation of Environmental Technologists (FET) is holding a regulatory update on **November 10** at the Midway Hotel's Milwaukee/Brookfield location. Reservations are due **November 1**. The agenda features DNR's Remediation and Redevelopment Program, including updates on the Dry Cleaner Environmental Response Fund (DERF), an update from the Department of Commerce on changes to the Petroleum Environmental Cleanup Fund Act (PECFA), a Brownfields update and a discussion on asbestos demolition and recycling. The fee is \$115 for member and \$140 for non-members, and includes lunch and printed materials. For a complete agenda, list of speakers and a registration form, please see http://www.fetinc.org/newwebsite/Upcoming_Events/11-10-05RegulatoryUpdate.pdf

EPA Brownfield Grants Due December 14

The guidelines for federal fiscal year 2006 EPA Brownfield Assessment, Cleanup and Revolving Loan Fund grants are now on EPA's web site at <http://www.epa.gov/swerosps/bf/applicat.htm>. The application deadline is **December 14, 2005**. These grants for local governments can provide up to \$200,000 to assess contamination at brownfields, \$200,000 for brownfield cleanup, and up to \$1 million to establish a revolving loan fund. Major changes in this round of federal grants include these items.

- The time period for Assessment and Cleanup grants has been increased from two years to three years.
- For cleanup grants, the required date of site ownership has been moved from September 30, 2006 to June 30, 2006. Phase II assessments must be underway or completed at the time of the cleanup grant application.
- No site-specific Revolving Loan Fund proposals will be considered. These grants must now be used for community-wide projects.
- The scoring criteria have changed, including a 5-point increase in the applicant's demonstrated ability to manage grants (programmatic capability) and a 4-point increase for ability to manage a revolving loan fund.
- Applications may be made electronically, if the applicant pre-registers with EPA.

We've also posted new "Tips for Applicants" on our web site at http://dnr.wi.gov/org/aw/rr/financial/applicant_tips.pdf. The tips cover some of the steps that should be started right away if you intend to apply for a federal grant, such as the letter of support from DNR and a community notification plan.

Questions on Deed Restrictions, Deed Notices or the GIS Registry?

The RR Program's *Guidance on Case Closure and the Requirements for Institutional Controls and VPLE Environmental Insurance* (RR-606) contains the information you need if you have questions on these topics. This guidance was updated in August, 2005 and is on the web at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR606.pdf>.

Institutional controls are required as a condition of case closure under s. NR 726.05 (8)(b), Wis. Adm. Code, when certain conditions exist, and may be required under s. NR 726.05 (8)(c) as a discretionary tool based on the post-remediation conditions.

The following types of institutional controls are used in the RR program:

1. Deed restrictions - A deed restriction requires an action in the future, and establishes restraints on activities or development on a property. For example, a deed

restriction may be used to limit a site to industrial land use due to the concentrations of residual soil contamination.

2. Deed notices - A deed notice is used to document certain conditions at the time that a case is closed, but for which no future action is required unless the site conditions change. Examples include notification of residual soil contamination or notification about a "lost" monitoring well.

3. GIS Registry – DNR's internet-based Geographic Information System (GIS) Registry of Closed Remediation Sites helps ensure that the public can find locations with soil or groundwater contamination that remains above standards after case closure has been approved. For groundwater, this means continued remediation is occurring through long term natural attenuation. Some sites on the GIS Registry also have a deed restriction or a deed notice recorded at the county Register of Deeds Office.

Appendix 2 of the *Guidance on Case Closure and Requirements for Institutional Controls* explains how to draft deed restrictions. It also includes checklists for making submittals to DNR, templates for deed restrictions and deed notices, a sample maintenance plan for deed restrictions and a maintenance inspection log. We've also provided the deed restriction template, sample maintenance plan and inspection log on our Resources for Environmental Professionals web page at <http://dnr.wi.gov/org/aw/rr/technical/index.htm>.

After DNR receives and approves all of the required information for case closure at sites that will be added to the GIS Registry of Closed Remediation Sites, we will send the case closure letter to the responsible party and post the final, recorded deed restriction and maintenance plan on the GIS Registry in an attached file (pdf).